

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5745 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

@

MAHENDRABHAI RATIMANBHAI SUNAMAVJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5745 of 2002
MR AR SHAIKH for Petitioner No. 1
MR HH PATEL Ld. AGP for Respondent No. 1-3
-

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Surat city dated 13.2.2002 in exercise of powers vested under him by

sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The order under challenge is dated 13.2.2002 and the same was executed on 14.2.2002. On perusal of the grounds for detention served to the detenu produced along with the petition reveal that the petitioner has been branded as dangerous person as he was found involved in three different criminal cases registered with Athwalines Police Station, Surat city between 17.5.2001 and 13.12.2001. He was arrested by Police on 25.1.2002 for the offence registered with Athwalines Police Station vide CR No. 87/2001. All these offences are punishable under sec. 380, 457, 454 of IPC etc. It transpires that during the police remand, the Investigating Agency found that he has been also involved in two other offences. Statement of two independent persons have also been recorded. The detaining authority has placed reliance on the facts narrated by the two unnamed witnesses. The legality and validity of the order has been challenged on number of grounds mentioned in the memo of petition, however, during the course of oral submissions, ld. counsel for the petitioner has submitted that even if the facts narrated by two independent witnesses and the fact that the petitioner has been found involved in three criminal cases, the so called activities of the petitioner cannot be said to be a dangerous activity affecting the public order. Accepting the facts stated in the grounds for detention it can be said that the activities of the petitioner was prejudicial to the maintenance of law and order and not public order.

It is rightly submitted that the ratio of the decision of this court in the case of Ashok Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat & Ors., reported in 2000(1) GLH p. 393 would be applicable to the facts of this case. It is also pointed out that while dealing with the Special Criminal Application No. 1681 of 1992, the Division Bench of this Court has set aside the order of detention though the petitioner was found involved in more than 25 similar type of cases. The distinction between the maintenance of law and order and the public order has been sharply drawn by the Apex Court in more than one decision, but I do not think it necessary to refer these decisions. It is well settled that this distinction drawn by the Apex Court has been considered by this Court in available set of facts in above two cited decisions.

Accepting the arguments, the ratio of the above cited decisions shall be applicable to the facts of the present case. It shall be held that there was no scope for the detaining authority to conclude that the activity of the petitioner was prejudicial or dangerous to the maintenance of public order. So, there was no scope for the detaining authority to exercise the powers vested with it under sec. 3 of the PASA Act. So, on this sole ground, the petition is required to be allowed. It is not necessary to discuss other grounds mentioned in the memo of petition assailing the legality and validity of the order under challenge.

In the result, this petition is allowed. The impugned order of detention dated 13.2.2002 passed by Police Commissioner, Surat City, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)
mandora/